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[MANU/WB/0119/1972](#)

Equivalent Citation: [1973]43CompCas275(Cal), 78CWN176

IN THE HIGH COURT OF CALCUTTA

Appeal No. 310 of 1971, C.P. No. 222 and C.A. No. 178 of 1970

Decided On: 28.04.1972

Appellants: **Bharat Commerce and Industries Ltd.**

Vs.

Respondent: **Registrar of Companies and Anr.**

Hon'ble Judges:

S.K. Mukherjea and S.C. Ghose, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: S.B. Mukherjee, Adv.

For Respondents/Defendant: Ashim Ghosh, Adv.

For Employees' Union: Prabir Sen, Adv.

Subject: Company

Catch Words

Mentioned IN

Acts/Rules/Orders:

Companies Act - Section 17 - Schedule - Articles 75 and 76

Cases Referred:

In Re: Edward Teltilles Ltd., [1968] 38 Comp. Cas. 284 (Bom.); Fred E. Edwards v. People of the State of California, [1941] 86 L. Ed. 119; In Re: Indian Aluminium Co. Ltd., I.L.R. [1967] 1 Cal 373; In Re: Indian Iron and Steel Co. Ltd., [1957] 27 Comp. Cas. 361, 61 C.W.N. 374, A.I.R. 1957 Cal. 234; In Re: Jewish Colonial Bank Ltd., [1908] 2 Ch. 287 (Ch. D.); In Re: Mackinnon Mackenzie & Co. (P.) Ltd., [1967] 37 Comp. Cas. 516, 71 C.W.N. 340 (Cal.); Mayor, Aldermen and Burgesses of the Borough of Bradford v. Pickles, [1895] A.C. 587; Orient Paper Mills Ltd. v. State, [1958] 28 Comp. Cas. 523, A.I.R. 1957 Orissa 232; In Re: Orissa Chemicals and Distilleries Private Ltd., [1962] 32 Comp. Cas. 497, A.I.R. 1961 Orissa 62; Poole v. National Bank of China Ltd., [1907] A.C. 229 (H.L.); Rank Film Distributors of India v. Registrar of Companies and the State of West Bengal, [1968] 38 Comp. Cas. 487, 72 C.W.N. 384, A.I.R. 1969 Cal. 32; In Re: River Steam Navigation Co. Ltd., [1967] 71 C.W.N. 854 (Cal.); Salomon & Co. Ltd. v. Aron Salomon, [1897] A.C. 22 (H.L.); In Re: Seksaria Cotton Mills Ltd., [1969] 39 Comp. Cas. 475 (Bom.); In Re: Standard General Assurance Co. Ltd., [1965] A.I.R. 1965 Cal. 16; In Re: Westburn Sugar Refineries Ltd., [1951] 1 All E.R. 881 (H.L.)

Disposition:

Appeal allowed

JUDGMENT

Ghose, J.

1. This appeal is directed against the judgment and order dated November 16, 1971, passed by the court of first instance (see [1973] 43 Comp. Cas. 162), refusing to confirm a special resolution passed by the petitioner-company at an extraordinary general meeting of the members of the petitioner-company held on May 30, 1970, at No. 10, Ring Road, Lajpat Nagar IV, New Delhi-24, resolving to remove the registered office of the company from No. 10, Camac Street, Calcutta, to the said No. 10, Ring Road, New Delhi, under Section 17 of the Companies Act, 1956.

2. The petitioner, Bharat Commerce & Industries Ltd., hereinafter referred to as the company, was originally incorporated under the name of Bharat Airways Ltd. on or about August 11, 1945. Upon the nationalisation of the scheduled passenger traffic by air, the name of the company was changed to Bharat Commerce & Industries Ltd. with effect from January 4, 1956. The present registered office of the company is situated at No. 10, Camac Street, Calcutta, within the original jurisdiction of this court.

3. The authorised share capital of the company is Rs. 5,00,00,000 divided into 25,00,000 equity shares of Rs. 10 each and 2,50,000 preference shares of Rs. 100 each. The issued and subscribed share capital of the company is Rs. 1,50,00,000 divided into 10,00,000 equity shares of Rs. 10 each, 30,000 9% redeemable cumulative preference shares of Rs. 100 each and 20,000 9.3% second redeemable cumulative preference shares of Rs. 100 each. All the aforesaid shares are fully paid up.

4. The objects of the company will appear from its memorandum of association. The company now carries on, inter alia, the business of manufacturing yarn and textile goods. After the nationalisation of the scheduled passenger flight by air, the company diversified its activities and established mills for manufacturing yarn and textile goods at Nagda in the State of Madhya Pradesh, Thana in the State of Maharashtra, Nanjangud in the State of Mysore and Rajpura in the State of Punjab.

5. The distance between different mills or factories belonging to the company and the registered office at Calcutta and the route inter se the said places are longer and circuitous than the distance between the said mills and factories and the route between the said places and Delhi.

6. Due to various disturbances at the registered office of the company in recent years it is stated in the petition that the management of the business and the affairs of the company situated at different places became impossible to carry on from Calcutta. In fact, the business of the company at its registered office has come to a standstill. For months together the registered office of the company has been lying closed and the company cannot do any work including registration of transfer of shares or holding of the general meeting of the shareholders there. Filing of annual returns, preparation of accounts and auditing the same cannot be done at the said registered office. It is clear, therefore, that works for complying with even the mandatory provisions of the statute cannot be done at the registered office of the company at No. 10, Camac Street, Calcutta.

7. In the premises, the directors and shareholders of the company contemplated and in fact decided to remove the registered office of the company from No. 10, Camac Street, Calcutta, to No. 10, Ring Road, New Delhi, in order to carry on the business of the company more efficiently and economically. The company issued notice for holding of an extraordinary general meeting of its members to consider and to resolve, if thought fit, to remove the registered office of the company from No. 10, Camac Street, Calcutta, to No. 10, Ring Road, New Delhi. The said meeting was held at No. 10, Ring Road, New Delhi, at 10-30 a.m. on May 30, 1970. 21 shareholders of the company were present in person and 68 of them were present by proxy. At the said meeting it was

unanimously resolved that, subject to confirmation by this court, "the provisions of Clause 2 in the memorandum of association of the company be and are hereby altered by deleting therefrom the word ' Bengal' and by substituting the words ' The Union Territory of Delhi.'" It was further resolved that, subject to the aforesaid resolution becoming effective, "the registered office of the company be removed from ' Industry House', No. 10, Camac Street, Calcutta-17, to No. 10, Ring Road, Lajpat Nagar IV, New Delhi-24, or such other place in the Union Territory at Delhi as may be determined by the board of directors of the company."

8. The company has not issued any debenture and in fact has no creditor save and except the usual trade creditors in the course of its business. No creditor or shareholder of the company has opposed this application. The court of first instance granted leave to Birla Brothers and its allied concerns' employees' union, of which the employees of this company are also members, to intervene in the proceedings.

9. For the appellant Mr. S.B. Mukherjee submits that the shareholders of the company after due deliberation unanimously resolved to transfer the registered office from Calcutta to New Delhi. No shareholder nor any creditor of the company opposed the transfer. The State of West Bengal was served with a notice of this application but did not choose to oppose the same. There are 18 employees of the company at its registered office. Out of them, 15 employees support the company's decision to transfer the registered office from Calcutta to New Delhi. One of the employees is untraceable and one has already resigned. Only one peon is opposing the said transfer. The employees' union, according to Mr. Mukherjee, has no locus standi to oppose the application. In fact, Mr. Mukherjee contends that the employees' interest cannot be considered in this application. Mr. Mukherjee relied on the case of Mayor, Aldermen and Burgesses of the Borough of Bradford v. Pickles, [1895] A.C. 587 A. Salomon & Co. Ltd. v. Aron Salomon, [1897] A.C. 22 Fred F. Edwards v. People of the State of California, [1941] 86 L.Ed. 119 Rank Film Distributors of India v. Registrar of Joint Stock Companies and State of West Bengal, [MANU/WB/0007/1969](#) In re Mackinnon Mackenzie & Co. (P.) Ltd, [1967] 37 Comp. Cas. 516; 71 C.W.N. 340 (Cal.) and In re Rivers Steam Navigation Co. Ltd., [1967] 71 C.W.N. 854, 897 (Cal.) Mr. Mukherjee contends that the workers of a company are not persons interested in the alteration of the memorandum of a company by removing its registered office from one State to another under Section [17](#) of the Companies Act. Mr. Mukherjee relied on In re Seksaria Cotton Mills Ltd., [1969] 39 Comp. Cas. 475 (Bom.) In re Edward Textiles, [1968] 38 Comp. Cas. 284 (Bom.) In the matter of Stanford General Assurance Co. Ltd., [MANU/WB/0012/1965](#) and In re Westburn Sugar Refineries Ltd., [1951] 1 All E.R. 881 (H.L.)

10. Mr. Ashim Ghosh, appearing on behalf of the Registrar of Joint Stock Companies, relied on Articles 75 and 76 of the articles of association of the company and submitted that no extraordinary general meeting can be called except upon the requisition of the requisite number of members. That meeting has to be called at the office, i.e., the registered office of the company. Mr. Ghosh relied on Article 92 of the articles of association of the company. Mr. Ghosh submitted that by reason of the premises the meeting held at No. 10, Ring Road, New Delhi, was bad and the resolution passed therein was also bad and no effect can be given to the said resolution.

11. Mr. Prabir Sen, appearing on behalf of the employees' union, submitted that Section [17](#) of the Companies Act confers power upon the court to control the decision of the domestic forum of the company in regard to some of its internal management and affairs as mentioned in the said section. According to Mr. Sen, employees are persons within the meaning of Sub-section (4) of the said section whose interests are likely to be prejudiced by the proposed transfer if carried into effect and thus the court of first instance was right in granting leave to the union to intervene. Mr. Sen further contended that the question of bona fides of the company in removing the registered office can be and in fact has to be gone into in such an application. The facts of closure of the registered office and nonpayment of the salaries of the employees have been suppressed in the petition, which, according to Mr. Sen, shows the mala fides on the part of the company. Further, there was no genuine ground, according to Mr. Sen, for transferring the registered office of the

company. The proposed transfer, if effected, will certainly prejudicially affect the interest of workers. Mr. Sen relied on cases, Rank Film Distributors of India Ltd. v. Registrar of Companies, [1968] 38 Comp. Cas. 487 ; 72 C.W.N. 384, 389 ; A.I.R. 1969 Cal. 32 In re Westburn Sugar Refineries Ltd., [1951] 1 All E.R. 881 In re Jewish Colonial Bank Ltd., [1908] 2 Ch. 287 (Ch. D.) In re Indian Aluminium Co. Ltd., I.L.R. [1967] 1 Cal. 373 In re Indian Iron & Steel Co. Ltd., [MANU/WB/0073/1957](#) Orient Paper Mills Ltd. v. State, [MANU/OR/0068/1957](#) and In re Orissa Chemicals & Distilleries Private Ltd., [MANU/OR/0026/1961](#)

12. Mr. Sen relied on the provisions of the Companies Act indicated in Sections [94](#) and [323](#) thereof and emphasised on the difference between the provisions of the said sections and Section [17](#) of the said Act. The former sections did not require the sanction of the court whereas Section [17](#) required the sanction of the court as condition precedent. Mr. Sen further contended that proceedings are pending before the conciliation officer in regard to the disputes between the company and its employees and thus the transfer should not be sanctioned in the instant case.

13. Section [17](#) of the Act empowers a company to alter the provisions contained in its memorandum by a special resolution in order to remove its registered office from one State to another; the said section also empowers a company in the like manner to change any of its objects clauses contained in its memorandum for the reasons mentioned in Clauses (a) to (g) of Sub-section (1) of Section [17](#) of the Act. The section enjoins upon the court to be satisfied before confirming the alteration that notice has been given to the debenture holders of the company and to every person or class of persons "whose interests would be affected by the alteration and to see that the debt or claim of a creditor who objects to the alteration is discharged or determined or secured to the satisfaction of the court". Sub-section (6) to the said section imposes upon the court in exercising its discretion under the said section, the obligation to have regard to the rights and interests of the members of the company and every class of them including adjournment of the proceedings in order to enable the parties to arrive at arrangements for the purchase of the interests of the dissentient members of the company without reducing the share capital of the company. The court has to give notice, under subsection (4) to the section, of the petition for confirmation of the alteration to the Registrar of Companies in order to enable him to appear before the court and state his suggestion in regard to confirmation of the alteration. Sub-section (4) to the said section was introduced by way of amendment in 1965 by Act LXV of 1965 to empower the Registrar to appear before the court and point out any irregularity in an alteration proposed by a company to its memorandum.

14. Under the English law confirmation by court is not necessary in order to alter the memorandum by a company. The members of the company can do so by means of a special resolution and that comes into effect at once. If 15 per cent. or more of the members of the company object to the alteration they may apply to the court for nullifying the effect of the special resolution. But in our country the alteration proposed by a company by a special resolution of its members to the memorandum of the company cannot take effect until scrutinised and confirmed by the court. Under the section the court has discretionary power to confirm the alteration wholly or in part and/or on such terms and conditions as it may think fit.

15. As noted earlier, only three of the employees of the company did not agree to the proposed transfer of the registered office. Mr. Samaren Sen, leading Mr. S.B. Mukherjee for the company, stated before us that the company would not retrench any of its employees because of the transfer of the registered office of the company from Calcutta to New Delhi. That statement with the consent of Mr. Sen we directed to be recorded.

16. In view of the aforesaid statement which has been recorded, we do not think that there is any substance any more in the contention that the company's proposed act is mala fide and that the company is seeking to transfer the registered office in order to stifle the proceedings between the employees of the company and the company pending before the conciliation officer. We do not, however, express any view as to whether the question of bona fides of a company in transferring

its registered office from one State to another can be germane in an application for confirmation of the alteration of the memorandum by removing its registered office from one State to another. In the instant application it is not necessary and indeed irrelevant for us to express any opinion on the said question. The learned judge in the instant case granted leave to the union mentioned above to intervene in the proceedings and upheld the contention of the union and refused to confirm the proposed alteration. In Rank Film Distributors' case it was held by a Division Bench of this court that the State had no legal right to the issue and service of notice under Section [17\(3A\)](#) and that the loss of revenue to or employment to the citizens of a State are not relevant factors for consideration in an application for sanction to alter the memorandum of a company by removing its registered office from one State to another. The case of the Westburn Sugar Refineries was considered by the Division Bench in that case and the observations of Lord Macnaghten as explained by Lord Radcliffe in regard to the meaning of the words "general public" by limiting the words "to persons who may in the future have dealing with the company and may be minded to invest in its securities" was approved of. It should be noted in this connection that the case of *Poole v. National Bank of China Ltd.*, [1907] A.C. 229 (H.L.) and the case of *In re Westburn Sugar Refineries Ltd.* were cases concerning reduction of share capital of companies and not removal of registered office. In fact, in England, as it is apparent, no registered office of a company can be removed from one State to another. In the case of *Mayor, Aldermen and Burgesses of the Borough of Bradford v. Pickles* it was laid down that if a person can do an act lawfully his motive behind doing of the act would be immaterial. In fact, even if the motive was mala fide or malicious to injure another until and unless the action was illegal the motive could not be called into question.

17. In the instant case it appears to us that the resolution was not illegal nor ultra vires nor injurious to any of the members or creditors of the company nor even to its employees who chose to oppose the application for confirmation of the alteration, in view of the statement made by Mr. Sen in this court in regard to them. In the instant case, it is submitted by Mr. Prabir Sen that the fact of closure of the registered office of the company in Calcutta was suppressed from the shareholders in the notice convening the extraordinary general meeting including the explanatory statement to the said notice. In our opinion, the omission of the said fact to be stated in the notice or the explanatory statement thereto did not in any way vitiate the said notice or the meeting or the resolution. In fact, if the said grounds were stated in the notice or the explanatory statement the same would have been stronger grounds for the members to decide for the removal of the registered office from Calcutta to New Delhi. It is well-settled that the court in construing a notice for a meeting of a company only tries to protect the interest of the absentee members. In our opinion, the omission to state the aforesaid facts in the said notice or the explanatory statement thereto did not mislead any of the absentee members. In fact, none of the members as noted earlier came to oppose the application for sanction. Mr. Prabir Sen then contended that the company had no right to transfer its employees from Calcutta to Delhi and, if sanction is given by the court to the proposed alteration, that would empower the company to transfer its employees from Calcutta to Delhi. In the instant application we are not called upon to decide as to whether the company can transfer any of its employees from Calcutta to any other place. Indeed we are unable to do so. Those questions would be governed by the provisions of the Industrial Disputes Act which we cannot take notice of in the instant application.

18. Mr. Ashim Ghosh's contention that an extraordinary general meeting can be called and held only on the requisition of the requisite number of members mentioned in Article 76 cannot be accepted. Article 75 of the company empowers the board of the company to call general meeting. But, then all general meetings except the annual general meetings of a company are extraordinary general meetings. Hence, the meeting in the instant case to consider the proposed resolution for alteration of the memorandum was rightly called, in our opinion, by the board under Article 75 of the company. Thus the said meeting need not have been held only at the registered office of the company and on the said ground the meeting was not bad nor the resolution passed at the said meeting could or can be said to be bad or void. All the aforesaid contentions of Mr. Ghosh must fail.

19. In view of the aforesaid we do not think it necessary to deal with the other cases cited at the Bar.

20. For the reasons stated above we are of the opinion that this appeal must succeed. The appeal is allowed. There shall be order in terms of prayer (a) of the petition. In the facts and circumstances of this case we, however, direct that each party shall pay and bear his or its costs of this appeal.

S.K. Mukherjea, J.

21. I agree.

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